

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KELLY LUECK,

Plaintiff,

Civil No. 07-6239-TC

v.

ORDER

FRANKLIN A. ROSMUNY, D.M.D., P.C.
an Oregon professional corporation, and
FRANKLIN A. ROSUMNY, an individual.

Defendants.

COFFIN, Magistrate Judge:

Plaintiff has filed this action alleging violations of ORS 659A.030 and Title VII, wrongful discharge, intentional infliction of emotional distress and battery. Presently before the court are defendants' motions (contained in #5) to dismiss and to strike. Plaintiff has filed a persuasive opposition to the motions. Defendants have not filed a reply addressing the opposition. For the reasons stated below, defendants' motions are denied.

Discussion

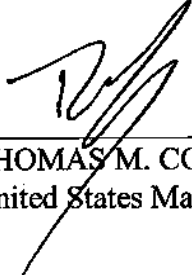
Defendants have moved to dismiss the Title VII claim as "[p]laintiff has not pleaded that she has timely filed an administrative charge with the Equal Opportunity Commission...." P. 1 of Memo in Support (#6). However, plaintiff alleges in her complaint that she "has exhausted all administrative remedies necessary to proceed on her claims," P. 1 of Complaint, Exh. 1 to Notice of Removal (#1), and plaintiff's opposition to the motion provides specific detail of this. The motion is denied.

Defendants have also moved to strike certain factual allegations under Fed. R. Civ P. 12(f). However, plaintiff has demonstrated the materiality and appropriateness of these allegations at this stage of the proceedings. It should also be noted that a Pretrial Order will eventually supercede the pleadings. The Pretrial Order will reflect the appropriate facts and claims and a jury will not see the complaint.

Conclusion

Defendants' motions (contained in #5) to dismiss and strike are denied.

DATED this 23 day of October, 2007.



THOMAS M. COFFIN
United States Magistrate Judge